E/2011/45-E/C.18/2011/6

United Nations

Committee of Experts on International Cooperation in Tax Matters

Report on the seventh session (24-28 October 2011)

Economic and Social Council
Official Records, 2011
Supplement No. 25

Please recycle

Economic and Social Council
Official Records, 2011
Supplement No. 25

Committee of Experts on International Cooperation in Tax Matters

Report on the seventh session (24-28 October 2011)

United Nations • New York, 2012

Note

Symbols of United Nations documents are composed of letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

[9 February 2012]

Contents

Chapter		*Page*
I.	Introduction	1
II.	Organization of the session	3
III.	Discussion and conclusions on substantive issues related to international cooperation in tax matters	5
	A. United Nations Model Tax Convention update	5
	B. Transfer pricing: practical manual for developing countries	17
	C. Taxation of development projects	18
	D. Tax treatment of services	18
	E. Revision of the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries	19
	F. Capacity-building	20
	G. Tax cooperation and its relevance to major environmental issues, particularly climate change	21
	H. Summary of outcomes of subcommittees and working groups and papers for the eighth annual session	22
IV.	Dates and agenda for the eighth session of the Committee	24
V.	Adoption of the report of the Committee on its seventh session	25

Chapter I
Introduction

1. Pursuant to Economic and Social Council decision 2011/253, the seventh session of the Committee of Experts on International Cooperation in Tax Matters was held in Geneva from 24 to 28 October 2011.

2. The seventh session of the Committee of Experts was attended by 23 members of the Committee and 105 observers. The following members of the Committee of Experts attended the session: Kwame Adjei-Djan (Ghana),[1] Sae Joon Ahn (Republic of Korea), Farida Amjad (Pakistan), Keiji Aoyama (Japan), Bernell L. Arrindell (Barbados), Noureddine Bensouda (Morocco), Claudine Devillet (Belgium), El Hadji Ibrahima Diop (Senegal), Jürg Giraudi (Switzerland), Liselott Kana (Chile), Anita Kapur (India), Armando Lara Yaffar (Mexico), Wolfgang Lasars (Germany), Tizhong Liao (China), Henry Louie (United States of America), Julia Martínez Rico (Spain), Enrico Martino (Italy), Robin Oliver (New Zealand), Ifueko Omoigui-Okauru (Nigeria), Iskra Georgieva Slavcheva (Bulgaria), Stig Sollund (Norway), Marcos Aurélio Pereira Valadão (Brazil) and Ronald van der Merwe (South Africa).

3. The session was also attended by observers for Argentina, Australia, Austria, the Bahamas, Belgium, Brazil, Canada, China, the Czech Republic, the Democratic Republic of the Congo, Gabon, Italy, Japan, Kuwait, Luxembourg, Mexico, Monaco, Morocco, Namibia, the Netherlands, Nigeria, the Republic of Korea, Saudi Arabia, Singapore, South Africa, Spain, Switzerland, Thailand, Turkey, the United Kingdom of Great Britain and Northern Ireland and Viet Nam.

4. Observers from the following intergovernmental organizations were also present: European Commission, International Monetary Fund, Organization for Economic Cooperation and Development (OECD), Southern African Development Community.

5. Observers from the following other entities also participated: Bournemouth University, Canadian Tax Foundation, Ernst and Young, European Law Students' Association, Fairleigh Dickinson University, Federation of Industrial and Service Groups in Switzerland, Foundation for International Taxation, India, International Association of University Presidents, International Bureau of Fiscal Documentation (IBFD), International Chamber of Commerce, KIMEP-Kazakhstan Institute of Management, Leiden University, Melbourne Law School, PricewaterhouseCoopers, Royal Dutch Shell, St. Thomas University, Tax Council Policy Institute, Tax Justice Network, United States Council for International Business, University of Groningen, University of Indonesia, World Association of Former United Nations Interns and Fellows. Others participated in their personal capacity.

6. The provisional agenda and documentation for the seventh session as considered by the Committee (E/C.18/2011/1) was as follows:

1. Opening of the session by the representative of the Secretary-General.

2. Election of the Chair and Vice-Chairs.

[1] The countries of the members are noted merely for information, as members of the Committee act in their personal capacity.

3. Remarks by the Chair of the Committee.

4. Adoption of the agenda and organization of work (E/C.18/2011/1 and E/C.18/2011/2).

5. Discussion of substantive issues related to international cooperation in tax matters:

(a) United Nations Model Tax Convention update (E/C.18/2011/3, E/C.18/2011/4, E/C.18/2011/CRP.1 and E/C.18/2011/CRP.2 and Add.1-3);

(b) Dispute resolution (E/C.18/2011/CRP.3 and E/C.18/2011/CRP.4);

(c) Transfer pricing: practical manual for developing countries (E/C.18/2011/5 and E/C.18/2011/CRP.10);

(d) Article 13: capital gains;

(e) Taxation of development projects;

(f) Tax treatment of services (E/C.18/2011/CRP.7);

(g) Concept of beneficial ownership;

(h) Revision of the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries (E/C.18/2011/CRP.11 and Add.1-7);

(i) Capacity-building (E/C.18/2011/CRP.8);

(j) Tax cooperation and its relevance to major environmental issues, particularly climate change (E/C.18/2011/CRP.9);

(k) Further issues for consideration by the Committee.

6. Dates and agenda for the eighth session of the Committee.

7. Adoption of the report of the Committee on its seventh session.

Chapter II
Organization of the session

Opening of the session and adoption of the agenda

7. On 24 October 2011, the Director of the Financing for Development Office, Department of Economic and Social Affairs of the Secretariat, Alexander Trepelkov, opened the annual session and made introductory remarks. He briefly outlined the main issues on the agenda of the session and summarized the work that had been done since the previous session. The central issue was the update of the United Nations Model Double Taxation Convention between Developed and Developing Countries (the United Nations Model Convention), which represented the culmination of the work of the Committee and of the previous Ad Hoc Group of Experts in the 10 years since the previous update. Mr. Trepelkov noted the importance of finalizing the latest update without delay.

8. Another timely issue was the practical manual on transfer pricing for developing countries, which would provide much-needed assistance to developing countries in the practical application of the arm's-length principle reflected in both the United Nations Model Convention and the OECD Model Tax Convention on Income and on Capital (the OECD Model Convention). The chapters of the manual were being drafted with an emphasis on ensuring that developing country perspectives, priorities and experiences were fully taken into account. The complete draft manual was expected to be presented for adoption to the Committee at its session in 2012.

9. Mr. Trepelkov pointed out the importance of capacity-development work, especially as the updated United Nations Model Convention and the practical manual on transfer pricing were being finalized. He mentioned a capacity-development strategy recently developed by the Department of Economic and Social Affairs, which identified fiscal policy and international tax cooperation as priority areas. He briefly outlined specific modalities and projects that would be utilized to implement that area of the strategy. They would be funded by the United Nations regular programme of technical cooperation, the United Nations Development Account and donors.

10. Mr. Trepelkov then provided an update on relevant developments within the United Nations intergovernmental process. The key new element was the adoption by the Economic and Social Council of resolution 2011/23, in which the Council requested the Secretary-General to submit a report on the role and work of the Committee in promoting international cooperation in tax matters, including further options on strengthening the work of the Committee and its cooperation with concerned multilateral bodies and relevant regional and subregional organizations, and decided to hold a one-day meeting in March 2012 to consider international cooperation in tax matters, including institutional arrangements to promote such cooperation, with the participation of national tax authorities. The Committee members would be invited to provide inputs to the report of the Secretary-General by early 2012.

11. The Committee then proceeded to the election of a new bureau, as the terms of the previous officeholders had come to an end. All the members of the previous bureau were elected to the same offices by acclamation. The new bureau therefore

consisted of Armando Lara Yaffar as Chair, Tizhong Liao as First Vice-Chair, Anita Kapur as Second Vice-Chair and Henry Louie as Third Vice-Chair. All would serve in those capacities until the current terms of the Committee members expired at the end of June 2013. Robin Oliver was elected Rapporteur for the seventh annual session.

12. The provisional agenda (E/C.18/2011/1) was adopted. With respect to the organization of work, sub-items 5 (b), 5 (d) and 5 (g) would be addressed under sub-item 5 (a) as would the summary of the outcomes of subcommittees and working groups and papers for the eighth session.

Chapter III
Discussion and conclusions on substantive issues related to international cooperation in tax matters

A. United Nations Model Tax Convention update

13. The Chair suggested that the most efficient way to work on finalizing the United Nations Model Tax Convention update was to discuss it article by article. There were four types of revisions proposed: (a) substantive changes to the 2001 Model Convention that had already been approved by the Committee; (b) substantive changes not yet approved by the Committee; (c) changes reflecting updates of referenced parts of the OECD Model Convention, which were substantive in nature as they could have an impact on the interpretation and application of treaties that would follow the United Nations Model Convention; and (d) purely editorial changes. The Committee agreed to focus discussions on the second and third types of proposed revisions in order to avoid reopening issues which had already been decided by the Committee.

14. It was agreed that already agreed changes would be altered only in cases where there was a clear error or inconsistency, or an out-of-date reference that needed correction. The Secretariat was tasked with addressing purely editorial issues, and note was taken that such issues would necessarily be governed to some extent by United Nations rules. Issues that could not be addressed in the course of the present session would be excluded from the current update and included in a catalogue of items for future discussion and possible inclusion in later updates.

15. The update to the United Nations Model Convention was introduced by Robin Oliver, the Coordinator of the Subcommittee on the Update. The compilation text reflecting all adopted and proposed revisions to articles and commentaries was contained in documents E/C.18/2011/CRP.2 and Add.1-3. Mr. Oliver stressed that the final text had to be agreed by the end of the session if the update was to be issued in 2012.

16. It was agreed that all references to the OECD Model Convention would be to its 2010 update, unless otherwise specified. A specific reference to an OECD commentary by the Committee meant that it was endorsed by the Committee as being of assistance in interpreting and applying the provisions of the United Nations Model Convention.

17. The Committee agreed to mandate the Secretariat to introduce the remaining editorial revisions and formatting after the session and to circulate the final text to the Committee members for their approval prior to publication.

18. The Committee then proceeded to discuss the particulars of the update, as proposed in the documentation for the meeting.[2] The text of the update would be made available on the Committee's website.

[2] Articles 1-11 are covered in document E/C.18/2011/CRP.2/Add.1; articles 12-30 are covered in E/C.18/2011/CRP.2/Add.2. All the conference room papers referred to in the present document for the seventh and previous sessions can be found on the Committee's website (www.un.org/esa/ffd/tax).

19. For each article (except as specifically noted below), Mr. Oliver presented an overview of the revisions and highlighted those issues that needed to be considered by the Committee. In addition to the introductions by Mr. Oliver, article 8 would be introduced by Ronald van der Merwe, article 13 by Tizhong Liao, articles 18 to 22 and 25 by Claudine Devillet, articles 14 to 17 by Liselott Kana and articles 23 and 24 by Anita Kapur. The main outcomes of the discussions on those items are set out below.

Article 1: Persons covered

20. It was agreed that paragraph 63 of the commentary (non-arm's-length transfer prices) would include reference to the practical manual on transfer pricing for developing countries currently in preparation and a cross-reference to article 9 (associated enterprises).

21. It was also agreed not to change the wording in paragraph 81 referring to the international hiring-out of labour. The OECD commentary on article 15 had been updated in the 2010 OECD Model Convention to go beyond the hiring-out of labour to clarify more generally the application of the paragraph in the case of services that were provided through intermediaries. The Committee agreed to incorporate those updates into the commentary on article 15.

Article 2: Taxes covered by the convention

22. The proposed wording was adopted without changes.

Article 3: General definitions

23. In paragraph 4 of the commentary, which addresses the term "person" it was decided to use the complete text of the OECD commentary, subject to its verification by the Secretariat and the Subcommittee and confirmation by the Committee. Paragraph 4 would then read:

> The definition of the term "person" given in subparagraph (a) is not exhaustive and should be read as indicating that the term "person" is used in a very wide sense (see especially articles 1 and 4). The definition explicitly mentions individuals, companies and other bodies of persons. From the meaning assigned to the term "company" by the definition contained in subparagraph (b), it follows that, in addition, the term "person" includes any entity that, although not incorporated, is treated as a body corporate for tax purposes. Thus, e.g., a foundation (*fondation, Stiftung*) may fall within the meaning of the term "person". Partnerships will also be considered to be "persons" either because they fall within the definition of "company" or, where this is not the case, because they constitute other bodies of persons.

24. Concern was expressed over the use of the word "imposed" in the last sentence of paragraph 13.1, dealing with a situation in which the law changed after the Convention was signed: "When a conflict arises between the legislation in force when the Convention was signed and that in force when the tax is imposed, the latter interpretation prevails." To address that issue, it was agreed to change the wording of the last sentence of paragraph 13.1 to read: "When a conflict arises between the law in force when the Convention was signed and that in force when the Convention is applied, the latter law prevails."

Article 4: Resident

25. Some members were of the view that the second sentence of the proposed quoted paragraph 8.8 of the OECD commentary, which said that if a State disregarded a partnership for tax purposes, partners were eligible to benefit from the treaty, contradicted paragraph 6 of the commentary on article 1 of the United Nations Model Convention, which said that the taxation of partners should be guided by domestic law. Others found no contradiction, as paragraph 6 referred to domestic law in general, whereas paragraph 8.8 addressed a specific situation in which domestic laws of the State of source and the State of residence differed. Those members also said that it was important to retain paragraph 8.8 as it was the only one that dealt with hybrid cases.

26. It was agreed that the quotation of paragraph 8.8 would be retained, and a new paragraph, reflecting the minority view that there was a contradiction between paragraph 8.8 and paragraph 6 of the commentary on article 1, was approved for inclusion. In that connection, it was also recalled that the content of paragraph 8.8 was not reflected in the commentary on article 1 owing to the fact that the Committee had not fully considered the issues raised in the 1999 OECD publication *The Application of the OECD Model Tax Convention to Partnerships*. It was agreed that the new paragraph, which would follow the quoted paragraph 8.8 of the OECD commentary, would read as follows:

> Some members of the Committee of Experts did not agree with the proposition in paragraph 8.8 of the OECD commentary extracted above that the partners of fiscally transparent partnerships can claim the benefits of the Convention. They were of the view that a special rule is required in a convention to provide such a result.

27. Some members proposed the deletion of the second sentence in paragraph 24.1 quoted from the OECD commentary, which read as follows: "Some countries also consider that such a case-by-case approach is the best way to deal with the difficulties in determining the place of effective management of a legal person that may arise from the use of new communication technologies." They were of the view that the inclusion of an alternative diverted focus away from the principal manner of establishing the place of effective management. In their view, it was preferable to offer clear guidance, and in case of conflict countries could use the mutual agreement procedure to resolve the issue.

28. Other members said that there was value in giving another option, and that that did not imply a recommendation of an approach. Given that the United Nations Model Convention did not include country "observations" or similar individual country interpretations, giving another option was the only way to include alternatives. It was also pointed out that many developing countries already used the alternative option and that it had been adopted in some regional models. It was agreed to include the above-mentioned sentence, with a small revision inserted immediately before the quoted paragraph, reading: "In this respect, the OECD commentary refers to some relevant country practices:".

29. It was also agreed to include consideration of the concept of "the place of effective management", an issue relevant to developing countries, in the catalogue of issues for future discussion.

Article 5: Permanent establishment

30. It was decided to delete the proposed quoted OECD paragraph 5.5, dealing with whether a satellite in geostationary orbit could constitute a permanent establishment, and to instead include the discussion of the matter in the catalogue of issues.

31. It was necessary to clarify in paragraph 12, the meaning of the word "connected" to describe projects that were sufficiently related to be added together, and it was decided to include that question in the catalogue of issues.

Article 6: Income from immovable property

32. The proposed wording was adopted without changes.

Article 7: Business profits

33. Paragraph 1 of article 7 contained explanations as to why the United Nations Model Convention was not adopting the wording of the commentary in the OECD 2010 update in preference to the wording of the pre-2008 OECD update. This was owing to a decision by the Committee not to adopt the "authorized OECD approach" to article 7 arising from the 2008 OECD *Report on the Attribution of Profits to Permanent Establishments*. The authorized OECD approach was seen as inappropriate in the context of the United Nations Model Convention. It was agreed to rephrase the third sentence of paragraph 1, referring to that report, as follows: "The 2008 *Report on the Attribution of Profits to Permanent Establishments* envisions taking into account dealings between different parts of an enterprise such as a permanent establishment and its head office to a greater extent than recognized by the United Nations Model Convention."

34. Three options were presented in document E/C.18/2011/CRP.2/Add.1, reflecting the quoted paragraph 45 of the OECD commentary on article 7:

- Option A, to quote just the first sentence of the OECD text
- Option B, to include the entire quotation of the OECD text (this was regarded as problematic by some members as it might appear to endorse the application of the authorized OECD approach to the United Nations Model Convention, contrary to decisions taken by the Committee, and involved difficult concepts that might confusing to users)
- Option C, to draft a replacement paragraph that would draw more explicitly upon the wording and approach of the pre-2008 OECD Model Convention.

35. After discussion of the options, it was agreed to accept a modified option C. Article 45 would not be quoted, and the United Nations commentary, inserted immediately after quotation of paragraph 44 of the OECD Model Convention, would read:

> Consequently, the Committee of Experts considers it preferable to look for a practical solution. This would take into account a capital structure appropriate to both the organization and the functions performed, taking into account the need to recognize that a distinct, separate and independent enterprise should be expected to have adequate funding.

36. It was also decided to include in the catalogue of issues for future discussion the consideration of the authorized OECD approach.

Article 8: Shipping, inland waterways transport and air transport

37. Several members expressed concern over the comprehensive changes proposed in the commentary on article 8. It was argued that the changes would widen the scope of the article and therefore needed to be discussed in detail in order to assess their implications.

38. Consequently, the OECD commentary paragraphs added in 2005, which referred to the income from directly connected and ancillary activities of shipping and air transport enterprises, were removed. It was decided to include in the catalogue of issues for future discussion the term "auxiliary" in the context of the auxiliary activities that would come within the operation of the article.

39. It was agreed to delete the proposed paragraph 8 on the issue of including fishing, dredging or hauling activities on the high seas under the commentary on this article. Concerning paragraphs 12 and 13 it was agreed to retain the text in strikethrough in the update, which meant that the correct reference for quoted paragraphs 4 to 14 would be to the 2003 OECD commentary.

Article 9: Associated enterprises

40. The main issue for the commentary on article 9 related to the wording in paragraph 3 of the 2001 version of the commentary expressing a recommendation by the former Group of Experts that countries should follow the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD Transfer Pricing Guidelines) in applying the arm's-length principle. Paragraph 3 of the 2001 United Nations Model Convention provides:

> With regard to transfer pricing of goods, technology, trademarks and services between associated enterprises and the methodologies which may be applied for determining correct prices where transfers have been made on other than arm's-length terms, the Contracting States will follow the OECD principles which are set out in the OECD Transfer Pricing Guidelines. These conclusions represent internationally agreed principles and the Group of Experts recommend[s] that the Guidelines should be followed for the application of the arm's-length principle which underlies the article.

41. Following discussion, it was agreed to retain the existing paragraph, which endorsed the arm's-length principle in determining transfer pricing issues implicit in article 9 and which recognized the role that the OECD Transfer Pricing Guidelines played in practice in applying the arm's-length principle. Most members considered that those views were still appropriate. Some members raised concerns, however, about the appropriateness of the views of the former Group of Experts as set out in paragraph 3 and questioned whether they were too broadly stated. In particular, the recommendation that countries should follow the OECD Guidelines might need to mention the fact that they were only for guidance in applying the arm's-length principle. Three members (Marcos Valadão, Tizhong Liao and Anita Kapur) had reservations on the views expressed by the former Group of Experts as stated in paragraph 3 of the commentary.

42. It was agreed to consider those issues further without prejudging the outcome of such consideration. In the meantime, paragraph 3 was amended to clarify that the views expressed by the Group of Experts in the 2001 United Nations Model Convention had not been fully considered by the Committee, although there was unanimity among the Committee members that the arm's-length principle underlay article 9 of the United Nations Model Convention. The Committee noted that work was continuing on producing a manual on the practical aspects of transfer pricing, which would focus on the issues facing developing countries. The mandate for the Subcommittee charged with that work was reconfirmed.[3] The Subcommittee was mandated to develop a practical manual on transfer pricing, based on the following principles:

(a) It should reflect the operation of article 9 of the United Nations Model Convention, and the arm's-length principle embodied in it, and be consistent with relevant commentaries of the United Nations Model Convention;

(b) It should reflect the realities for developing countries at the relevant stages of their capacity development;

(c) Special attention should be paid to the experience of other developing countries;

(d) It should draw upon the work being done in other forums.

43. In addition, it was confirmed that the work would continue in accordance with the understandings outlined in paragraph 48 of the report on the sixth session (E/2010/45), including that it would be consistent with the OECD Transfer Pricing Guidelines, to which the United Nations commentaries made reference.

44. In accordance with the results of the discussions as noted, it was agreed that the wording of paragraph 3 should be amended to read as follows (the new wording is in boldface type):

> With regard to transfer pricing of goods, technology, trademarks and services between associated enterprises and the methodologies which may be applied for determining correct prices where transfers have been made on other than arm's-length terms **the former Group of Experts stated that** the contracting States will follow the OECD principles, which are set out in the OECD Transfer Pricing Guidelines. **The former Group of Experts, in the United Nations Model Convention published in 2001, came to the view that** these conclusions represent internationally agreed principles and **it** recommended that the Guidelines should be followed for the application of the arm's-length principle which underlies the article.
>
> **The views expressed by the former Group of Experts have not yet been considered fully by the Committee of Experts, as indicated in the records of its annual sessions.**

Article 10: Dividends

45. The proposed wording was adopted without changes.

[3] The mandates of the Committee's, Subcommittee's and working groups are available from www.un.org/esa/ffd/tax/fifthsession/SubcommitteesMandates.pdf.

Article 11: Interest

46. The proposed wording was adopted without changes. It was noted that additional elaboration on the treatment of Islamic financial instruments would be included in the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries.

Article 12: Royalties

47. It was noted that the consideration of article 12 was difficult for the purposes of the update, owing to the fundamental differences in approaches between the United Nations Model Convention and the OECD Model Convention with regard to the taxation of royalties. Nevertheless, article 12 had not been fully considered by the Committee, and it was agreed that it would be included in the catalogue of issues for future discussion. Concern was expressed about the last part of paragraph 11, which limited the relevant scope of information to that arising from previous experience. A new sentence was drafted to reflect the minority view and adopted for inclusion immediately following quoted paragraph 11 of the commentary. A view was also expressed that payments referred to in quoted paragraphs 14, 14.1, 14.2, 14.4, 15, 16, 17.2 and 17.3 might constitute royalties. A new sentence was drafted to acknowledge that view and was adopted for inclusion.

Article 13: Capital gains

48. The proposed wording was adopted without changes. The practical implications of paragraph 4 of article 13 would be included in the catalogue of issues for future discussion.

49. Many administrative issues involved in the implementation of the article would be addressed in the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries.

Article 14: Independent personal services

50. The proposed wording was adopted without changes.

Article 15: Dependent personal services

51. It was decided to omit the quotation of OECD paragraph 7.2, as it made reference to the notional payments referred to in the new article 7 of the OECD Model Convention, which was part of the authorized OECD approach not adopted in the present update. It was further agreed to reflect in the commentary that some members disagreed with the proposition in quoted paragraph 6.2 of the OECD commentary that the concepts of "employer" and "resident" were applied at the level of partners.

Article 16: Directors' fees and remuneration of top-level managerial officials

52. The proposed wording was adopted without changes.

Article 17: Artistes and sportspersons

53. The proposed wording was adopted without changes, except that the Committee agreed that paragraphs 10, 11.1 and 11.2 of the OECD commentary would be quoted in their entirety.

Article 18: Pensions and social security payments

54. It was agreed to slightly modify the proposed paragraph 3 of the commentary to read "the provisions of article 23 A or 23 B will determine whether the State of residence shall exempt such income or shall allow, as a deduction from its own tax on such income, the tax paid in the State of source" rather than "Article 23 A or 23 B will determine whether that right is exclusive (exemption method) or merely prior to that of the State of residence (credit method)". The reason was that the exemption method was not necessarily exclusive, as noted by one participant (e.g., exemption with progression, where the residence State retained for itself the right to take the exempt income into account for the purposes of determining the marginal rate at which the taxpayer's non-exempt income was subject to tax).

55. It was also agreed to modify the alternative in the first sentence of paragraph 5 as follows:

> However, such pensions and other similar remuneration may also be taxed in the other Contracting State if the payment is made by or on behalf of a pension fund established in that other State or borne by a permanent establishment situated therein and the payment is not subject to tax in the first-mentioned State under the ordinary rules of its tax law.

56. It was decided to delete the words "imposes a final withholding tax on the gross amount of the pensions or" in the first sentence of paragraph 12.

57. The last two proposed sentences of paragraph 13, on the link between pension benefits and the State in which the fund is established, were deleted as the issue had not yet been fully considered by the Committee.

58. Finally, it was agreed to add "made by or for employees and individuals providing independent services" in the heading before OECD paragraph 31, to ensure that the scope was clear in the United Nations context.

Article 19: Government service

59. The proposed wording was adopted without changes, except that paragraph 1 was amended to more accurately reflect the changes made as part of the current update.

Article 20: Students

60. The proposed wording was adopted without changes.

Article 21: Other income

61. It was decided to include lottery income in paragraph 2 under the examples of income not expressly dealt with previously in the Convention and to strike out the pension example in the same paragraph. The reference to "a pension that is neither

paid in consideration of past employment nor under a public scheme part of a social security system" was removed as not necessarily governed by article 21.

Article 22: Capital

62. The proposed wording was adopted without changes.

Article 23: Methods for the elimination of double taxation

63. A note (E/C.18/2011/CRP.2/Add.3) had been prepared by Claudine Devillet on the possible inclusion of article 23 A of the OECD Model Convention, in particular paragraph 4, on conflicts of qualification and conflicts of interpretation. It was decided to address the matter in the commentary (new paragraph 19) and not to include paragraph 4 in the article itself. The issue of conflicts of qualification would be included in the catalogue of items for future discussion.

64. Further, in quoting OECD paragraph 49, on dividends from substantial holdings by a company, it was decided to replace the threshold of 5 per cent with an ellipsis ([...]) to prevent confusion, since the United Nations Model Convention did not specify a rate.

65. With reference to OECD subparagraphs 69.1 to 69.3, on the treatment of partnerships (omitted in the conference room paper for the session), it was decided to include them and subsequently to include the view of those who did not agree with the approach taken under the OECD Model Convention, as follows: "Some members of the Committee of Experts were, however, of the view that a special rule is required in a convention to provide such a result."

Article 24: Non-discrimination

66. It was decided to include the general remarks (paras. 1-4) from the OECD commentary, which initially had not been included in the proposed text. They were regarded as providing useful background and as not being controversial.

67. It was agreed to include OECD paragraphs 60 and 61, on branch profits taxes, in the United Nations text; they were initially not included in the draft commentary on this article. However, it was also decided to include a United Nations paragraph between the two paragraphs, reading as follows:

> The commentary on article 10 has considered the issue of branch profits taxes in paragraphs 18 to 24 and suggested an optional provision for branch profits tax which takes precedence over article 24.

Article 25: Mutual agreement procedure

68. The Committee had agreed at its 2010 annual session that the updated version of the United Nations Model Convention would have two options for article 25: article 25 A, without a mandatory arbitration provision, and article 25 B, with mandatory arbitration. The Subcommittee on Dispute Resolution was asked to prepare revised commentary to reflect those alternatives. In accordance with that mandate Claudine Devillet, Coordinator of the Subcommittee, presented a note on that subject (E/C.18/2011/CRP.3), which drew upon the OECD Model Convention commentary, discussions at the 2010 session, the written comments of Committee

members and discussions at the ad hoc expert group meeting on the update held in New York in June 2011 (see E/C.18/2011/3, annex).

69. Ms. Devillet noted that new paragraph 1 presented two alternatives and indicated four differences between the arbitration procedures proposed under the United Nations Model Convention and under the OECD Model Convention. The expansion of paragraph 2 aimed at addressing the scope of the mutual agreement procedure by clarifying the scope of article 9, specifically in cases when paragraph 2 of article 9 was not included in a treaty. The commentary mentioned the two different views with respect to the scope of article 25 in the absence of paragraph 2 of article 9. Some countries considered that economic double taxation arising from transfer pricing adjustments did not fall within the scope of article 25 in the absence of paragraph 2, while other countries disagreed.

70. New paragraphs 3-5 provided guidance to countries on how to decide whether providing for mandatory arbitration in their treaties was appropriate. Paragraph 3 dealt with the case of countries that had very little experience with the mutual agreement procedure and could not immediately decide whether or not arbitration was appropriate for them. The paragraph contained the option of postponing such a decision while signalling openness to considering the issue by including a relevant clause in the treaties and delaying its coming into force until both countries were ready. Following discussion, the wording of paragraph 3 was amended. Instead of indicating that the decision whether to include a provision on mandatory arbitration should be deferred, it was agreed that the wording should suggest that the countries either reject arbitration at that stage or, alternatively, include the arbitration provision but postpone its entry into force until each country had notified the other that the provision should become effective.

71. In relation to paragraph 42, dealing with cases where domestic legal proceedings were under way, the text would be modified to acknowledge one member's view that a taxpayer should not be allowed to defer acceptance of a mutual agreement outcome until judgement had been pronounced by the domestic court. Also, in relation to paragraph 11 (c) of the sample form of arbitration, it was agreed that there would be no independent right of oral presentation by the person presenting the case.

72. Paragraph 34 would provide, in its last sentence, that where a domestic law matter directly affected the application of tax convention provisions, the arbitrator could decide on that matter.

Article 26: Exchange of information

73. Discussion on this article focused on the penultimate sentence of paragraph 1, which contained wording different from that used in the OECD Model Convention, i.e., exchange of information that "would be helpful" rather than information that was "foreseeably relevant". Some members were of the view that the same wording should be used in both so as to send a consistent message on the exchange of information. Other members were against reopening what had already been discussed and agreed on by the Committee (E/C.18/2008/3 and Corr.1, para. 4.2) as being a useful departure from the wording of the OECD Model Convention, while still representing a common standard on the exchange of information. It was agreed to retain the wording previously agreed by the Committee.

Article 27: Assistance in the collection of taxes

74. The proposed wording was adopted without changes.

Article 28: Members of diplomatic missions and consular posts

75. The proposed wording was adopted without changes.

Article 29: Entry into force

76. The proposed wording was adopted without changes.

Article 30: Termination

77. The proposed wording was adopted without changes.

Introduction to the United Nations Model Convention

78. Michael Lennard of the Secretariat presented a draft introduction to the United Nations Model Convention (E/C.18/2011/CRP.1) for discussion by the Committee. The Committee agreed that it was desirable for the introduction to be shorter than the introduction to the 2001 version and to avoid the level of historical detail found there.

79. The Secretariat noted that the proposed introduction placed the United Nations Model Convention firmly in the context of financing for development. The following additions and modifications were proposed:

- Clarify that where the OECD commentary was quoted but paragraphs were excised, it could not be assumed from the exclusion alone that the Committee disagreed with the paragraphs
- Clarify that it should not be assumed that any particular Committee member took a particular view as to specific provisions
- Indicate[4] that in quoting the articles and commentaries of the OECD Model Convention, the related formal "reservations", "observations" and "positions" were not also quoted for practical reasons, but were useful in terms of understanding how that Convention was interpreted and/or applied by particular countries.

80. It was agreed that those changes should be made and the redrafted introduction be made available for further comment by members. The first clarification should be to explain that the reason for the exclusion of part of a paragraph, rather than a whole paragraph, might only be that it had not yet been fully considered. It was also agreed to modify the proposed discussion of taxation of income from services in the introduction so that the scope of that work was noted, as was the potential relevance of the work to future revisions of the United Nations Model Convention. The introduction should also note that the work programme of the Committee, including on the taxation of services, would be made available on the Committee's website.

[4] As discussed in the note by the Secretariat on the relevance of country observations, reservations and positions to the United Nations Model Tax Convention (E/C.18/2011/4, para. 11).

81. The Committee also identified treaty policy issues that required further work, and it mandated one of its subcommittees to address the issue of the taxation treatment of services in general and in a broad manner, including all related aspects and issues. The issue of the taxation of fees for technical services should also be addressed. It was recognized that that task was the initiation of extensive work, and it was acknowledged that there would not be any results ready for incorporation into the present version of the United Nations Model Convention. In the future, if the Committee so decided, any conclusions that could potentially be useful could be presented as a Committee report, which might shape the next revision of the United Nations Model Convention. The work programme of the Committee, including that on services, would be made available on the Committee's website as it developed.

Title of the United Nations Model Convention

82. There was discussion about whether the current title of the "United Nations Model Double Taxation Convention between Developed and Developing Countries" could be shortened. It was recalled that during the expert group meeting in June 2011, suggestions had been made to shorten the title by removing "between Developed and Developing Countries", or to change it to "United Nations Model Double Taxation Convention for Development". Some members objected to such a change on the grounds that the United Nations Model Convention was relevant mainly to treaties between countries at different levels of development, and therefore to remove that reference would do a disservice to the Convention.

83. On the other hand, it was argued that whether countries were formally classified as developing or developed was not the main practical consideration in determining whether countries would wish to follow the United Nations or other models; the United Nations Model Convention was drawn upon by many treaties between two developed countries or between two developing countries. Some also expressed doubt as to whether amending the title was within the mandate of the Committee based on the resolutions of the Economic and Social Council. Following the discussion, it was agreed to keep the title as it was.

Other aspects of the United Nations Model Convention update

84. In essentially concluding the work on the update, the Committee considered some of the general issues surrounding that work and requested that:

(a) The Economic and Social Council, in adopting any resolution or decision addressing the update of the United Nations Model Convention, seek country positions on the Convention from Member States in order to make it clearer which countries had adopted certain interpretations, especially when the commentaries noted differing interpretations of the same provision. That would enhance the practical value of the Convention;

(b) The new updated version of the Convention be made available in printed form as soon as possible;

(c) The Convention continue to be made freely available in downloadable form from the website of the Financing for Development Office of the Secretariat;

(d) Translation into the other official languages of the United Nations and publication in those languages take place as soon as possible after the publication of the English-language version.

85. The Committee also expressed the view that the Model Convention should be updated more frequently in the future, on the understanding that each update would not need to be comprehensive.

B. Transfer pricing: practical manual for developing countries

86. The Coordinator of the Subcommittee, Stig Sollund, reported on the progress made so far at various meetings that the Subcommittee had held and between meetings. The draft manual now had working drafts of nine chapters in various stages of readiness.[5] There was also a working draft of the foreword. Comments on all of them were welcome. The introductory remarks were followed by presentations on some of the chapters.

87. Michael Kobetsky presented the chapter on the business framework. Its purpose was to provide background on multinationals and their business structures for the tax authorities of developing countries unfamiliar with dealing with multinationals. The topics covered in the chapter included the roles played by multinationals, how the value added to transactions within a multinational were priced, the supply chain analysis, double taxation that might arise with transfer pricing, and the consequences of economic double taxation of multinational enterprises. A section on the financing of multinationals was to be added.

88. Monique Van Herksen presented the chapter on methods used in transfer pricing analysis. The chapter reflected recent changes made and additions that were necessary to keep the chapter consistent with the Subcommittee's mandate. She mentioned that a recent survey had shown that even within OECD, many countries had made practical simplifications to the OECD Transfer Pricing Guidelines, which demonstrated that the difficulties in strictly following the Guidelines were not unique to developing countries.

89. Ms. Van Herksen described the main issues still to be dealt with. They included tests and comparability, which needed to be recalibrated with the chapter on comparability in order to ensure consistency between the chapters. She invited the participants to contribute practical examples that could be included in the chapter. She discussed the need to add a new chapter or include in another chapter information on particular cases and country experiences such as the Brazilian experience with fixed profit margins.

90. M. A. C. Dike of Nigeria presented the work on audit and risk assessment. The issues dealt with included the required organization of the transfer pricing group, the qualifications that needed to be represented in an effective transfer pricing audit team, and the criteria for setting cases for audit keeping in mind that not all cases could or should be audited. For effective audit, the risk should be assessed according to a transactional and/or jurisdictional approach. The type of information used for audit was also reviewed.

91. In the discussions that followed, it was suggested that in dealing with the arm's-length principle, specific cases, including market uniqueness and treatment of market premiums, location saving and intangibles, should be taken into account. The automobile industry in one country was given as a prime example. In that regard, it

[5] Available from www.un.org/esa/ffd/tax/documents/bgrd_tp.htm.

was stressed that an overpricing of intangibles could wipe out the benefits for the countries where value was really created.

C. Taxation of development projects

92. Jacques Sasseville referred to the second session of the Committee, in 2006, at which a paper on tax treatment of donor-finance projects had been presented by the International Tax Dialogue Steering Group (E/C.18/2006/5). The paper related to the policy and administrative problems arising from tax exemptions that were sought and granted to those involved in assistance projects.

93. At the following session, in 2007, the staff of the International Tax Dialogue Steering Group presented draft guidelines on the subject (E/C.18/2007/CRP.12) to the Committee for its views. The guidelines could be used by both donors and recipient countries. The guidelines suggested that donors should recognize that the granting of tax exemptions created significant difficulties for recipient countries and proposed that when there was sufficient confidence in the governance structure and tax systems of recipient countries, donors should be encouraged not to insist on such exemptions. The Committee discussed the use of the guidelines by donor agencies and recipient countries. However, holding a general discussion of the question had proved difficult. The African Tax Administration Forum had expressed interest in pursuing the issue, but it had many priorities and limited resources. The Ministry of Foreign Affairs of Norway had also expressed an interest in the discussion of the matter.

94. Victor Thuronyi added that a large part of the problem in achieving progress in that area, including acceptance of the guidelines, was that the issue was out of the hands of tax officials. If tax officials had greater control over decisions on exemptions, they would probably find solutions that recognized the fact that the exemptions being sought might be impeding financing for development.

D. Tax treatment of services

95. Wim Wijnen, Counsel to the Academic Chair, IBFD, and Jan de Goede, Senior Principal Tax Knowledge Management, IBFD, presented a paper entitled "The tax treatment of services in tax treaties",[6] prepared at the request of the Committee. The authors analysed over 1,500 tax treaties to determine what kind of provisions countries used when dealing with services. One conclusion was that countries in principle preferred to follow the standard provisions of the models, without deviation. Only if those were not adequate did they adopt more detailed criteria, which could obscure the distinction between various treaty provisions, e.g., provisions on professional services and dependent personal services. When no standard provisions were available, as was the case with autonomous provisions on services and on services linked with royalty contracts, countries developed their own policy, resulting in a great number of diverse provisions that made the application of treaties challenging. Another conclusion was that countries appeared to have a strong preference for taxation of net income rather than withholding tax on

[6] Available from www.un.org/esa/ffd/tax/seventhsession/index.htm.

gross income. The Committee thanked the speakers and IBFD for their contributions to the important discussion on services.

96. Liselott Kana introduced the work of the Subcommittee on Services and then Brian Arnold briefly summarized his paper (E/C.18/2010/CRP.7 and Add.1), presented at the sixth session of the Committee. The discussion, guided by the alternatives listed in Mr. Arnold's paper, focused on ways of taking forward the work on services.

97. Some members called for a comprehensive approach to reviewing the treatment of services under the United Nations Model Convention, namely, an article-by-article review of all the provisions of the Convention dealing with services, paying special attention to fees for technical services and permanent establishment issues. Others were of the view that if that approach were followed, it would not be possible to achieve concrete results within a reasonable period of time. It was agreed that the Committee would start with work on "fees for technical assistance" with a view to achieving concrete results for the next annual session, but it would also have a longer-term plan of work with a view to a comprehensive review of services issues for the United Nations Model Convention.

E. Revision of the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries

98. Bernell Arrindell, the Coordinator of the Subcommittee on Revision of the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries, reminded the participants that the manual was intended to be used in conjunction with the United Nations Model Convention and its commentaries, and not as a replacement. He described the progress made within the last 12 months, during which two tele-conference meetings and one "in-person" meeting took place. The latter was hosted by Fairleigh Dickinson University in New Jersey, United States of America, which he thanked for its contribution.

99. Frank Brunetti continued by pointing out the revised parts of the manual and invited the members of the Committee and observers to send in their comments, as the manual was being finalized. He indicated that Part II had been substantially revised and renamed "Basic Approaches to Tax Treaty Negotiations". In revised Part II, the sections formerly entitled "Observations" had been renamed "Discussions". In addition, several examples would be included in that part to illustrate and exemplify the relevant issues raised in one of the articles. Members of the Committee and other participants were invited to provide any examples that they might have.

100. Part III dealt with procedural aspects of tax treaty negotiations, dispute resolution-mutual agreement procedures and arrangements between competent authorities regarding the exchange of information. Part IV was an appendix for special consideration items such as the improper use of tax treaties, the treatment of Islamic financial instruments, an Australian Taxation Office ruling on interpreting Australia's double tax agreements (a suggested new addition) and a historical overview of international double taxation. Part V dealt with model conventions and conventions in force, giving several prominent examples. An interactive questionnaire on the manual would be posted on the Internet to collect comments

regarding the manual and its use in practice. Finally, the proposed manual was expected to be coordinated with the Subcommittee on Capacity-Building.

101. In conclusion, the Subcommittee again requested that the Committee members and observers send their comments and inputs on the several parts of the manual that were already posted on the Financing for Development Office website by the end of January 2012. The Subcommittee had scheduled a meeting to take place in February 2012 in Barbados to finalize the draft manual, taking into account comments received. Other offers to work with the Subcommittee on finalizing the manual were also appreciated. Mr. Arrindell noted that Professor Bret Wells of the University of Houston, in Texas, United States of America, had recently joined the Subcommittee.

F. Capacity-building

102. The Coordinator of the Subcommittee, Ifueko Omoigui-Okauru, presented an update on the work of the Subcommittee (E/C.18/2011/CRP.8). After reviewing its mandate, she described the main activities undertaken by the Subcommittee. Since the previous session, the Subcommittee had held three meetings, in March, May and October 2011.

103. The first meeting focused on strategies and the effective management of the Subcommittee's website[7] (supported by S4TP — the South-South Sharing of Successful Tax Practices project of the United Nations Development Programme (UNDP) and RTpay/RTvat). The major objectives of the website and its areas of focus were discussed, and an overall strategy for managing the website was discussed and agreed.

104. The second meeting mainly reviewed the Subcommittee's workplan. Further discussions were also held on the development of the content, structure and management of the website with a view to cost-effective and regular update, the meeting also discussed the appointment/recruitment of country correspondents for the website, relationship-building with partner organizations, donor agencies and international and regional tax bodies, and proposals for the expansion of the membership of the Subcommittee. Finally the meeting discussed a proposal for the creation of a new body, for example in the form of a working group, to examine the taxation of electronic transactions and to report to the Committee at its seventh session. The third meeting reviewed the progress of the Subcommittee and considered its report.

105. The Committee noted with appreciation the services of a full-time staff member of the Federal Inland Revenue Service of Nigeria to work on matters related to the Subcommittee and to serve as a country correspondent for the website. Ms. Omoigui-Okauru asked Committee members and other participants to help identify suitable persons in their home countries to answer the questionnaire on capacity-building, which so far had received answers from only 15 countries.

106. On the question of specific funding, Ms. Omoigui-Okauru informed the Committee that €15,000 had been provided by the German Society for International Cooperation (GIZ), which was being managed by the non-governmental

[7] www.s4tp.org.

organization New Rules for Global Finance Coalition for the establishment of a transfer pricing unit in the Federal Inland Revenue Service of Nigeria and for the training of officials. IBFD had also generously provided free courses to developing country participants in tax treaty negotiation (an "in-person" course) and in other areas (online courses). RTpay/RTvat had also continued to provide support in the design and hosting of the S4TP website.

107. A compilation of the results of the questionnaire on the needs for capacity-building among developing countries was also presented. With respect to the type of capacity-building support received during the last three years within the ministries of finance of the respondents, most support was in the formulation of tax policies, including issues related to tax incentives and tax exemptions. For tax administrations, most support was received in relation to the computerization of tax administration, human resource strategy development and organization of functions, anti-corruption strategies and internal audits, and audit strategies focused on multinationals. Even though the number of responses was limited, the presenter, Arcotia Hatsimiditris of IBFD, was of the view that the responses showed that although developing countries appreciated individual, discrete training events, their preference was for mentoring and in-house, on-site training.

108. Chris Williams of RTpay/RTvat followed with a presentation on mobile electronic payments, which had rapidly increased in developing countries owing mainly to the explosion in the use of cell phones in those countries. With 5 billion mobile phone users around the world, as opposed to 2 billion bank account users, the potential for leveraging tax collection based on mobile technology was huge. The rapid increase in the use of cell phones for payment transactions, even for people who traditionally did not use banks, was noted. He recommended that further work be undertaken on issues such as clearing houses, types of transactions on which taxes were due, countering fraud and money-laundering and other crimes that might be associated with mobile payments.

109. The Committee thanked the Subcommittee for its work during the year and the presenters for their presentations. Following discussion, the Committee agreed to undertake a study on the issue of tax collection using mobile technology, to be presented at its next session. The issue of whether and what form of follow-up action should be taken could be addressed by the Committee at that time.

G. Tax cooperation and its relevance to major environmental issues, particularly climate change

110. Michael Lennard of the Secretariat and Erika Siu (whose research and drafting services for the paper on this subject (E/C.18/2011/CRP.9) were kindly supplied by the Special Unit on South-South Cooperation of UNDP as part of the S4TP project) presented this topic.

111. It was noted that the paper had focused mainly on the issue of the treatment of profits from emissions trading under double tax agreements following the United Nations Model Convention. On 31 May 2011, OECD had issued a public discussion draft, *Tax Treaty Issues Related to the Trading of Emissions Permits*, which was due to be considered further at the meeting of the OECD Working Party on Tax Conventions and Related Questions to be held in February 2012. A preliminary conclusion of the discussion paper was that regardless of whether it was treated

under OECD Model Convention article 7 as business profits, or article 13 as capital gains (the likely treatments by countries under existing tax treaties), income from emissions-permit trading ended up being subject to residence-country taxation.

112. However, the speakers noted that because the United Nations Model Convention differed from the OECD Model Convention (notably in respect of more source-State taxing rights), and because other articles could potentially apply to the taxation of permit-trading income (whether or not they currently did in respect of countries having emissions-trading schemes), there were cases where the distributive rules of tax treaties might lead to source-State taxation. It was noted that that question required close consideration and that the Committee might wish to consider establishing a working group to consider the application of the distributive rules to profits from emissions trading under the United Nations Model Convention. It could liaise closely with OECD, but with a special focus on the situation for countries following the United Nations Model Convention. The issue of the extent to which developing countries might or might not have emissions-trading regimes in the future was worthy of consideration.

113. It was also noted that the OECD work did not address an aspect of the Kyoto Protocol to the United Nations Framework Convention on Climate Change that was of special interest to developing countries, i.e., the clean development mechanism, whereby countries could implement emission-reducing projects in developing countries and receive certified emission reduction credits to meet their commitments. Those could be bought and sold, and therefore issues of profits from such transactions might arise. It was noted that the consideration of the position in such cases under the United Nations Model Convention would benefit those investing in such credits as well as developing countries.

H. Summary of outcomes of subcommittees and working groups and papers for the eighth annual session

114. After discussion, the Committee decided that all current subcommittees still had work to complete, to a greater or lesser extent, and that all should remain in existence. Tizhong Liao was unable to continue as Coordinator of the Subcommittee on Capital Gains because of other commitments. Mr. Liao was thanked for his contribution to the update, and Anita Kapur was invited to assume that role. In accepting the position, Ms. Kapur noted that paragraph 4 of article 13 would need to be looked into. Claudine Devillet noted that the Subcommittee on Dispute Resolution still had some work to do in completing the mutual agreement procedure guide.

115. It was noted that the Working Group on Beneficial Ownership had completed its mandated work. The members were thanked for their contribution, and the Working Group was disbanded.

116. The Committee decided to re-establish the Subcommittee on Exchange of Information with Mr. Oliver as Coordinator, taking into account recent developments, including within OECD. The relevant part of the mandate[8] of the former Subcommittee, now assumed by the revived Subcommittee, was to monitor international developments in the area of exchange of information (including

[8] See www.un.org/esa/ffd/tax/fifthsession/SubcommitteeMandates.pdf.

meetings of the Global Forum on Tax Transparency and Exchange of Information for Tax Purposes) with a report to the next annual session of the Committee containing recommendations on any further work the Committee should undertake in this area.

117. There was some discussion of whether to consider issues relating to the taxation of electronic commerce, but it was decided that at the present stage the matter was not a priority issue for the Committee.

118. With the latest update of the United Nations Model Convention completed, the Committee considered that it would be useful to examine a series of issues by having papers presented for discussion at the eighth session, in 2012. The question of whether to create subcommittees or working groups would be considered as part of that discussion. In that regard, the Committee decided that:

- Victor Thuronyi would provide a paper on hybrid entities, focusing on the classification of non-resident entities
- Claudine Devillet would provide a paper on the meaning of "connected" in relation to article 5
- Ronald van der Merwe would provide a paper on issues relating to article 8 (transportation), including possible updates to the commentary
- Jürg Giraudi would present a scoping paper on value-added tax, addressing cross-border issues related to permanent establishments
- Robin Oliver would present a paper on foreign direct investment issues, focusing on the relevance of economic rents in that context
- A report on taxation by electronic means would be presented by S4TP and RTpay under the auspices of the Subcommittee on Capacity-Building

119. It was decided to postpone future work on the article 9 commentary arising from the preliminary discussion at the current session until the practical manual on transfer pricing for developing countries had been finalized.

120. It was also decided to create a working group with a mandate to examine tax treaty issues related to climate change mechanisms, drawing upon the work already done by the Secretariat and in the context of the Organization for Economic Cooperation and Development. The working group, coordinated by Claudine Devillet with the participation of Anita Kapur and Marcos Valadão, would report to the annual session in 2012.

Chapter IV
Dates and agenda for the eighth session of the Committee

121. **The Committee decided to hold its eighth session in Geneva from 15 to 19 October 2012.**

122. The Committee decided upon the following draft agenda for its eighth session:

1. Opening of the session by the Chair of the Committee.
2. Adoption of the agenda and organization of work.
3. Discussion of substantive issues related to international cooperation in tax matters:
   (a) United Nations Model Tax Convention update (status of the 2011 agreed update, publication, etc.);
   (b) Transfer pricing: practical manual for developing countries;
   (c) Tax treatment of services;
   (d) Revision of the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries;
   (e) Article 13: capital gains;
   (f) The United Nations Model Convention and climate change mechanisms;
   (g) Exchange of information;
   (h) Dispute resolution: proposed mutual agreement procedure guide;
   (i) Capacity-building;
   (j) Taxation and use of mobile technology;
   (k) Taxation of development projects update;
   (l) Classification of hybrid entities;
   (m) Article 5: the meaning of "connected projects";
   (n) Permanent establishment issues in international value-added tax cases;
   (o) Article 8: transportation issues;
   (p) Foreign direct investment issues and corporate taxation.
4. Dates and agenda for the ninth session of the Committee.
5. Adoption of the report of the Committee on its eighth session.

Chapter V

Adoption of the report of the Committee on its seventh session

123. **The Committee approved and adopted the present report for submission to the Economic and Social Council, the details to be settled after the annual session.**

12-22955 (E) 130312

Please recycle